

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1463 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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BHARAT TRADERS  
VERSUS  
NAVNIRMAN CO.OP.BANK LTD.

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Appearance:

MR JAYANT PATEL for Petitioners  
MR BG JANI for Respondent

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 28/03/2000

C.A.V. JUDGMENT

1. Heard the learned counsel for the parties and gone through the notes of oral/written arguments

submitted by the counsel for the petitioner.

2. The respondent - Bank is impersonal like the State of Gujarat and it acts through its officers. The officers of the Bank if would have acted prudently, fairly, reasonably and in the interest of the Bank then possibly they would not have agreed for such a consent award. Be that as it may.

3. Learned executing court has not committed any material irregularity in exercise of its jurisdiction in passing of the impugned order. It is a just and reasonable order to which no exception can be made. Learned counsel for the Bank has given out that as on 30-9-1999 total decretal amount comes to the tune of Rs.66,34,000/-. The consent award has been passed in a Lavad suit on 16-1-1993. Though more than seven years have passed but it is unfortunate that not a single pie has been recovered by the decree holder from the judgment debtors. Much emphasis has been laid on the fact that the executing court cannot go beyond the decree.

4. It is contended that the decree holder has to take this amount from the amount of compensation lying deposited in this court in the first appeal. Other contention raised is that the award is a transfer decree and notice has to be given before any jangam warrant is issued.

5. These are all technical contentions and to be more specific, dishonest contentions. Even if such award is passed, it is the duty of the judgment debtor to pay dues of the bank. Jangam warrant has been issued and on application of the petitioner it was cancelled though on the condition that Rs.17 lacs has to be deposited. This order is challenged in this C.R.A.. Even if we go by the facts stated by the petitioner in the oral / written arguments, total amount which the petitioner may get is Rs.48 lacs. Arun Land Corporation has already taken Rs.92 lacs as part payment. So to get 25% of this amount, the petitioner has to fight with other person. Rs. 99 lacs is lying deposited in the court in First Appeal of which 25% is not more than Rs.25 lacs. Even otherwise everything is taken in favour of the petitioner that amount comes around to Rs.48 lacs whereas the total decretal amount of the bank as on 30-9-1999 is Rs.66,34,000/-. So this Rs.17 lacs which is ordered to be paid is added to Rs.48 lacs, total thereof would not exceed the decretal amount. Decree is against the petitioner and this has not been

executed for all these years. In fact, instead of insisting the Bank to go for further litigation, the petitioner should have acted as a bonafide person and should have taken all action to take money from the Arun Land Corporation and to pay to the decree holder. The way and the manner in which the petitioner proceeded shows that he is not interested to see that the decretal amount is paid. Only on these technical grounds, the order of the court below cannot be set aside. It is the tendency of the judgment debtors to take all sorts of objections so that the execution of the decree may be defeated. That is what the petitioner is doing in this case. In these facts, otherwise also, in case the order passed by the executing court is allowed to stand it will not occasion any failure of justice nor it will cause any irreparable injury to the petitioner.

6. In the result, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. It is a case where exemplary costs deserves to be awarded to the Bank. The petitioner is directed to pay Rs.5000/- as costs of this revision application to the Bank.

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